

## Chapter PW-CY 40

## CHILDREN AND YOUTH

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## LICENSING DAY CARE CENTERS FOR CHILDREN

**PW-CY 40.10 Introduction.** (1) **STATEMENT OF INTENT.** The intent of these rules is to protect and promote the health, safety and welfare of children in day care centers in Wisconsin.

(2) **EFFECT OF RULES.** The following rules for licensing have the full effect and force of laws as provided in chapter 227, Wis. Stats. These rules do not repeat the laws related to day care licensing. Persons using these rules should also be aware of and familiar with the statutory sections related to these rules so that they are knowledgeable about the requirements of the law as well as the rules.

(3) **TO WHOM THE RULES APPLY.** The rules apply to all day care centers for children.

(4) **EXCEPTIONS TO RULES.** The department may make exceptions to any of the rules for licensing day care centers when it is assured that granting such exceptions is not detrimental to the health, safety and welfare of children.

(5) **DEFINITIONS.** The following words and phrases have the designated meanings:

(a) *Department* unless qualified means the state of Wisconsin department of health and social services.

(b) *Division* unless qualified means the division of family services of the department.

(c) *Rule* means a regulation, standard, statement of policy or general order (including the amendment or repeal of any of the fore-going) of general application and having the effect of law.

(d) *Day care center* means a licensed facility where a person or persons provide, for compensation and/or consideration for service, group care for 4 or more children under 7 years of age, for less than 24 hours a day. A day care center may be licensed as:

1. A day nursery, which must meet all the rules for licensing day care centers, or as

2. A nursery school, which must meet the requirements for day nurseries and in addition, for each 25 children, must have at least one staff member certified as a nursery school teacher by the department of public instruction or a staff member who shows evidence of meeting the qualifications required for such certification.

(e) *Compensation* means payment for day care. This payment can be in the form of a cash fee or in the form of consideration for service performed.

**History:** 1-2-56; r. and recr. Register, October, 1961, No. 70, eff. 11-1-61; r. and recr. Register, August, 1970, No. 176, eff. 3-1-71.

**PW-CY 40.11 Organization and administration.** (1) **PURPOSE.** (a) Each day care center shall set forth a clearly defined statement of purpose which shall be filed with the department. If the center is incorporated, the constitution and by-laws may be filed with the department in place of the statement of purpose.

(2) **ADMINISTRATION.** (a) The board of directors or the owner shall be legally responsible for the operation of the center and for meeting the rules.

(c) Foster parents shall notify the legal custodian as soon as possible of emergencies involving the foster child. This includes serious illness or injury requiring medical treatment, unauthorized absence from the home, or other situations of which prudence suggests the legal custodian be notified. This requirement in no way relieves foster parents from first taking action such as obtaining emergency medical treatment for the child before notifying his legal custodian.

(d) Foster parents shall allow the legal custodian a minimum of 30 days in which to make suitable plans for the child when the foster parents have requested the child's removal from their home.

(e) Foster parents shall secure the approval of the child's legal custodian before making plans for the care of the child by other persons for any period in excess of 48 hours.

(f) No child in care shall be permitted to use or be known by the foster parents' surname unless the child's parents or guardian give their consent in writing, or the child's name is changed under section 296.36, Wis. Stats.

(g) Foster parents shall cooperate with the child's legal custodian in seeing that an appropriate relationship is maintained between the child and his relatives.

(h) Foster parents shall maintain in confidence all information detrimental to children in their care.

(11) RECORDS TO BE MAINTAINED BY FOSTER PARENTS. (a) Foster parents shall maintain during the time a child is in their care, a record on forms provided by the department. Such records shall contain the following information:

1. Child's name or alias by which he is known.
2. Child's birthdate.
3. Name of the person or agency to be notified in an emergency.
4. Date child received for care.
5. Person or agency placing the child.
6. Name of physician to be called in an emergency.
7. Medical information about the child while in their care such as medical examinations and immunizations, illnesses and accidents, including dates of each.
8. Name of dentist and dates child seen.
9. Name of school and grades attended.

b. At the request of the licensing agency or the department, foster parents shall make available for inspection such records of children received by them for care.

**History:** Cr. Register, April, 1957, No. 16, eff. 5-1-57; r. and recr. Register, June, 1970, No. 174, eff. 1-1-71.

**PW-CY 40.64 Supplemental payments for special needs and initial clothing allowances for children in foster homes. (1) PURPOSE.**

Register, July, 1978, No. 271  
Public Welfare

The purpose of this rule is to implement payment for special needs and initial clothing allowances for children in foster care in accordance with s. 49.19 (12), Stats.

(2) **DEFINITIONS.** (a) "Department" means the department of health and social services.

(b) "County agency" means a county department of social services or public welfare providing services under s. 48.56, Stats.

(c) "Foster home means" 1. a facility that is licensed under s. 48.62 (1), Stats. and has one or more foster children in care who are the responsibility of the department pursuant to s. 48.48, Stats. or a county agency under s. 48.56, Stats. 2. a facility licensed under s. 48.62 (2), Stats.

(3) **COVERAGE.** All foster home payments made directly to a foster home by a county department of social services or the department for the care and maintenance of a foster child shall be subject to the basic maintenance rates established by s. 49.19 (12), Stats. and supplemental payment and initial clothing allowance schedules established by the department.

(4) **SUPPLEMENTAL PAYMENTS.** (a) Supplemental payments may be made in addition to the age related rates specified in s. 49.19 (12), Stats. in an amount to be determined by the department for a foster child who requires more than the usual amount of care and supervision for the child's age because of special emotional, behavioral, or physical-personal needs.

(b) An assessment of each foster child shall be made within 30 days of placement in a foster home and not less often than 6 months intervals thereafter while the child remains in foster care to determine if the child has special needs which require a supplemental payment. The assessment of the foster child's special emotional, behavioral or physical-personal needs shall be made by comparing the child's characteristics to the schedule of difficulty of care levels described in subsection (5).

(c) If the foster child does not exhibit characteristics commensurate with levels B, C, and D of emotional, behavioral or physical-personal, no supplemental payment may be made. If the foster child exhibits characteristics commensurate with level B, C, or D in one or more of the emotional, behavioral or physical-personal special need categories, a supplemental payment in an amount to be determined by the department shall be paid.

(d) Documentation of the characteristics of any selected level of care shall be contained in the child's case record.

(5) **SCHEDULE OF DIFFICULTY OF CARE LEVELS.** (a) *Emotional.* 1. Level A, Not Applicable. These children do not exhibit unusual emotional characteristics for foster children in their age group.

2. Level B, Minimal. (Child must exhibit at least 2 characteristics which include or correspond in extent or degree with the following): These children demand excessive attention from others, they are nervous, high strung, impulsive, and they display temper tantrums. They

often are restless and hyperactive, have short attention spans and occasionally wet during the night. They exhibit low self esteem and confidence in their ability to deal with the world. They are periodically withdrawn and unresponsive.

3. Level C, Moderate. (Child must exhibit at least 2 characteristics which include or correspond in extent or degree with the following): Children at this level are habitually resistive and have difficulty communicating with others often failing to do what is expected of them. They typically respond to situations with apathy, showing a lack of any interest. They have difficulty in establishing relationships, setting up others for rejection. These children display cultural and social conflicts. They are frequent night bed wetters occasionally soil or both. They display over-activity and over-excitedness necessitating close supervision.

4. Level D, Intensive. (Child must exhibit one or more characteristics which include or correspond in extent or degree with the following but characteristic must be severe): These children may have infantile personalities, wet or soil during day time hours several times a week, have severe hyperactivity to the point of frequent destructiveness or sleeplessness, are chronically withdrawn, depressed or anxious, are self injurious, require constant and intensive supervision, may be involved in behavioral programs, or show bizarre or severely disturbed behavior. May display anorexia nervosa.

(b) *Behavioral*. 1. Level A, Not Applicable. These children do not exhibit unusual behavioral characteristics for foster children in their age group.

2. Level B, Minimal. (Child must exhibit at least 2 characteristics which include or correspond in extent or degree with the following): These children run away infrequently for short periods of time (1-2 days) with the intention of returning. They occasionally skip classes or an entire day, affecting class achievement and requiring make-up and parent/school contact. They use sexual acting out or language as an attention-getting mechanism and occasionally experiment with alcohol or drugs or both. They may have infrequent conflicts with parents or community authorities including displays of hostility, occasional petty theft of vandalism or both. They may exhibit occasional aggressive behavior, i.e., biting, scratching, throwing objects at another.

3. Level C, Moderate. (Child must exhibit at least 2 characteristics which include or correspond in extent or degree with the following): Children at this level frequently run away for longer periods of time (4-7 times/year or 3 or 4 days/occurrence) and require encouragement to return. They are frequently truant (1-2 times/month for more than 1 day) resulting in delayed academic progress including performance below ability which may lead to class failure, possible suspension and frequent parent/school contact. They may exhibit sexual activity harmful to themselves, disruptive to family and community. They frequently use alcohol or drugs or both. They exhibit hostile and aggressive behavior, often interfering with family, community relationships. They may occasionally have been involved in non-violent crimes which bring them into conflict with authority (e.g. burglary). They may exhibit frequent aggressive behavior, i.e., biting, scratching, throwing objects at another. May exhibit occasional self abusive behavior, i.e., head banging, eye poking, kicking self, biting self.

4. Level D, Intensive. (Child must exhibit one or more characteristics which include or correspond in extent or degree with the following but characteristic must be severe): These children frequently run away for long periods of time (8 or more times per year and 5 or more days at a time), returning only as a result of the initiative of others. They may habitually create a disturbance in the classroom or be habitually truant resulting in class failure, frequent suspension or expulsion, and require frequent parent/school contact. They exhibit sexual deviancy including that of a violent nature or an unconsenting involvement of others. They habitually use alcohol/or drugs or both. They may exhibit uncontrollable behavior, be involved in property offenses repeatedly, (adjudicated on more than one property offense which is as serious as grand theft or burglary), and have committed acts such as arson, physical assault or armed robbery. They may exhibit daily aggressive behavior, i.e., biting, scratching, throwing objects at another. May exhibit frequent self abusive behavior, i.e., head banging, eye poking, kicking self, biting self. Children may eat inappropriate items, i.e., rubber, metal.

(c) *Physical and personal care.* 1. Level A, Not Applicable. These children do not exhibit unusual physical or personal characteristics for foster children in their age group.

2. Level B, Minimal. (Child must exhibit one or more characteristics which include or correspond in extent or degree with the following): These children need some help with putting on braces or prosthetic devices and help with button or laces but are basically self-caring and able to maintain their own physical assisting devices. They have seizures or motor dysfunctions which are controlled by medication. Therapy for gross or fine motor skills can be done with supervision for children to achieve normal conditions. These children may require special diet preparation.

3. Level C, Moderate. (Child must exhibit one or more characteristics which include or correspond in extent or degree with the following): Children at this level need help with dressing, bathing, and general toilet needs including maintenance procedures such as diapering and applying catheters and require the help of a person or a device to walk or get around. They need assistance to care and maintain physical assisting devices. The children have feeding problems such as excessive intake, extreme messiness, extremely slow eating requiring help, supervision, or both. There may be need for tube or gavage feeding. These children require special care to prevent or remedy skin conditions such as decubiti (bedsores) and severe exzema. The administration of medication and preparation of special diets are demanding and prescribed physical therapies (i.e., for vision, hearing, speech, gross or fine motor skills) require one to two hours a day.

4. Level D, Intensive. (Child must exhibit one or more characteristics which include or correspond in extent or degree with the following): These children are non-ambulatory, may have uncontrollable seizures, need appliances for drainage, colostomy, aspiration, suctioning, mist tent, etc. Even with proper medical attention, vision, speech or hearing functions are impaired and may require foster parent training. These children are in need of daily prescribed exercise routines to improve or maintain gross or fine motor skills which require home administration. Prevention procedures such as daily irrigation may be required on behalf of the children. Excessive cleaning and laundry to maintain body

hygiene and control of child's body waste may also be required. Orthotics care at this level demands an excessive amount of time, care and responsibility. Prescribed physical therapies are two to three hours a day.

(6) **EXCEPTIONAL PAYMENT.** An exceptional payment in an amount to be determined by the department may be made in addition to the age related rates and supplemental payment when the additional payment will:

(a) Enable the child to be placed in a foster home and prevent placement in an institution, nursing home or hospital.

(b) Enable the child to be placed from an institution, nursing home, or hospital into a foster home.

(c) Replace a child's basic wardrobe which had been lost or destroyed through other than normal wear and tear.

(7) **INITIAL CLOTHING ALLOWANCE.** A clothing allowance may be paid upon a child's initial placement in foster care. The amount of the allowance shall be the actual cost of the clothing not to exceed a maximum as determined by the department. The placement of a child in foster care 120 days or more after the child had been removed from foster care shall be considered an initial placement.

(8) **APPEALS.** Any decision made by a county or the department pursuant to these rules may be appealed in accordance with s. 48.64, Stats.

**History:** Cr. Register, July, 1978, No. 271, eff. 8-1-78.

**PW-CY 40.65 Fair hearings.** (1) **LEGAL BASIS.** This rule is adopted pursuant to section 48.64 (4) (a), Wis. Stats.

(2) **DEFINITIONS.** (a) A claimant means a person licensed to operate a foster home under section 48.62, Wis. Stats., affected by a decision or order issued by a division of the department of health and social services, a county welfare department or a child welfare agency.

(b) A hearing is defined as an orderly, readily available proceeding before an impartial employe of the state agency, in which a dissatisfied claimant or his representatives may present his case with the help of witnesses to show why action or inaction in his case should be corrected by the state agency; it is a continuation of the administrative process in which the claimant invokes the responsibility of the state agency through a quasi-judicial hearing in the particular case.

**Note:** Impartial employe of the state agency is currently defined as a hearing officer of the legal section of DFS.

(c) A request for a hearing is defined as any clear expression on the part of the claimant to the effect that he wishes to go beyond the usual procedure for adjusting complaints with a division of the department of health and social services, a county welfare department or a child welfare agency, and that he wants an opportunity to present his case to the department of health and social services. The specific wording of such a request is immaterial.

(d) The date of the request for hearing is defined as the date on which the request is received.

(3) **PURPOSES.** The major purposes of hearings are:

Register, July, 1978, No. 271  
Public Welfare

(a) To provide an opportunity for a dissatisfied claimant to appeal a decision or order issued by a division of the department of health and social services, county welfare agency, or a child welfare agency affecting the claimant or the children involved.

(b) To enable the county and claimants, jointly, to ascertain the factual basis on which, through proper application of the law and agency policy, a just decision may be reached.

(c) To contribute to uniformity in the application of the law and policy by assuring that every claimant is fully informed of his rights, that hearings on any grievance are readily available, and that instances of inequitable treatment are speedily remedied by prompt execution of hearing decisions.

(d) To safeguard claimants from mistaken, negligent, unreasonable or arbitrary action. The hearing process is not a substitute for proper and efficient administration and is not designed to produce any result that could not have been produced through regular administrative processes.

(e) To reveal aspects of a division of the department of health and social services, a county welfare department or a child welfare agency policy that constitute a misconstruction of law, state rules or policy.